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No. 684.

Supreme Court of the United States.

OCTOBER TERM, 1940.

GUY T. HELVERING, COMMISSIONER OF INTERNAL REVENUE, *Petitioner*,

v.

RICHARD J. REYNOLDS.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Fourth Circuit.

MEMORANDUM FOR THE RESPONDENT.

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January, 1941.

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MEMORANDUM FOR THE RESPONDENT.

The instant petition is grounded principally on the alleged conflict of the decision below with *Van Vranken* v. *Helvering*, 115 F. (2d) 709, decided by the Second Circuit Court of Appeals, and with *Archbold* v. *Helvering*, decided *per curiam* by the same court on the same day. Although the decision below is in conflict in result with those cases, respondent respectfully submits that the conflict is not one of principle, and that a reading of the opinion in *Van Vranken* serves to persuade that the decision below in the instant case is right.

However, if the Court finds that such a conflict exists as would justify a review by it, the writ would issue. Accordingly respondent neither acquiesces in the petition nor opposes it.

Respondent Prays That If Writ Is Granted It Be Confined to the Issue of the Construction of the Provisions of Section 113 (a) (5) of the Revenue Act of 1934.

If the Court finds that a reviewable conflict exists and grants the writ, respondent respectfully prays that the issue thereon

be confined by the Court to the Federal question involved in construction of sec. 113 (a) (5) of the Revenue Act of 1934, under which statutory provision the instant case arises.

It is respectfully submitted that, in his petition (pp. 7–8), the petitioner has sought to present an issue concerning which there is no conflict below. At top of p. 7, petitioner states that he will urge that the court below erred in holding that, under the terms of the will of respondent's father, the interest of the respondent in the securities in question was not a vested interest, but merely contingent.

Concerning that question there is no conflict below, and therefore there would appear to be no basis for granting a writ of certiorari to review that question.

It is clear that no conflict on that point exists between the decision below and the decisions in *Van Vranken*, *supra*, and *Archbold*, *supra*. The decision in the *Archbold* case was *per curiam*. The opinion in *Van Vranken* (on the same day) after reviewing the facts and the law favorable to respondent's decision below herein, said: "Were it not for the change in the attitude of the Supreme Court toward the common-law distinction between contingent and vested remainders (*Helvering* v. *Hallock*, 309 U. S. 106) we should therefore find it difficult to escape the force of reasoning in *Reynolds* v. *Commissioner*, *supra* (114 Fed. (2d) 804)." Again, at the close of its opinion, the Court said: "Therefore, while without *Helvering* v. *Hallock*, *supra* (309 U. S. 106), we should probably have felt obliged to hold that the statute incorporated the earlier rulings of the lower courts; * * *." The Court, in that decision, viewed the *Hallock* case as having "declared that the whole distinction of the common law between vested and contingent remainders was irrelevant" and that "it meant to jettison the distinction as an archaism."

It is clear that, in *Van Vranken's* case, the Court's view was that it was unimportant, and hence unnecessary, to decide whether the taxpayer acquired an estate or interest which was vested, contingent, conditional, legal, equitable, executory, or otherwise,—and that the decision would be the same regardless

of what interest or estate the respondent had at the date of his father's death.

In the instant case, however, the court below held that respondent did not acquire any vested interest in the trust estate at his father's death; that none of it would have vested in him unless and until he arrived at the age of 28 years; that this precise point had been definitely decided by the courts of the State of North Carolina; and that respondent's interest was contingent and not vested (R. 47).

In order to point up the decision of the court below on this question, respondent invites the attention of the Court to the following:

As recited in the petition (p. 4) the trust provided, inter alia, that:

> Should my wife die while any of my children are between the ages of twenty-one (21) and twenty-eight (28) years,[1] then, from and after her death, said Trustee will pay to each of my said children, out of his or her share of my estate, and provided he or she shall have arrived at the age of twenty-one (21) years, Fifty Thousand Dollars ($50.000) per annum, and is directed to accumulate all the balance of said income for his or her respective use *until he or she shall respectively attain the age of twenty-eight (28) years, when each of them shall become entitled to* and shall respectively receive from said Trustee his or her share of the corpus of my estate, together with the accumulated income aforesaid. (Italics supplied.)

Paragraph (7) of the trust is quoted in part in the petition (p. 5) but respondent respectfully calls attention to certain parts of said paragraph which are not quoted in the petition. That paragraph provides for the vesting of the trust estate under a number of given circumstances, viz. (1) death of a child leaving a will; (2) death of a child intestate and leaving issue; (3) death of a child intestate and without issue. In the first instance it was provided:

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[1] The wife died in May, 1924, before respondent was 28 years of age. (Ex. A of Record, pp. 350–351.)

> *Should* any of my children die before he or she shall arrive at the age of twenty-eight (28) years, *then* the share of my estate *which would have been* payable to him or her, *had he or she arrived* at that age, *shall be continued* to be held by *my* said Trustee for the use and benefit of his or her devisees by Will *until the time* that such child *would have arrived* at the age of twenty-eight years, *if* he or she had lived, *when* the said trust shall cease and the estate shall then become payable to such devisees, * * *. (Italics supplied.)

In the second instance it was provided:

> but *should* any of my children die before that time without having disposed of any of his or her share by Will but leaving issue * * * the share of said deceased child shall continue to be held by my said Trustee *for the use and benefit of his or her children* * * * until the time *my child* so dying *would have arrived* at the age of twenty-eight (28) years, *if he or she had lived*, when the trust shall cease and the *estate shall then become vested* in his or her children, then surviving; * * * (Italics supplied.)

In the third instance it was similarly provided that if the child died intestate and without issue, the trust should be continued for his brother or sisters until such time as they, respectively, should arrive at the age of 28 years, when each of them should become entitled to his or her share of the corpus of the trust which should then vest in them.

The identical trust was construed by the courts of North Carolina. The Superior Court of Forsyth County is a court of general jurisdiction. It heard and decided the cause and entered judgment[1] as follows:

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[1] See factual and jurisdictional findings in ¶¶ 25 and 35 of said judgment. Record, "Exhibit B," pp. 718, 722. In ¶ 35 the Court said:

> That thereafter a further question arose in reference to the proper construction and application of paragraph Six of Item Four of the said will of R. J. Reynolds, and that thereupon an action was instituted in the Superior Court of Forsyth County by R. J. Reynolds (Jr.) against the Safe Deposit & Trust Company of Baltimore, Trustee * * *; that a judgment was entered in said action, which, upon appeal, was affirmed by the Supreme Court of North

There further coming on to be heard in this cause the intervening complaint of the State of North Carolina, setting forth its claim for inheritance and estate taxes; and the court, upon presentation of said complaint, having read and considered the will of R. J. Reynolds and the will and deed of Katherine S. Johnston for the purpose of determining the nature, character, and extent of whatever interest, or interests, said wills and deed conferred upon Zachary Smith Reynolds, in the trusts thereby established, hereby finds and concludes as follows:

(a) *The will of R. J. Reynolds did not bequeath or devise* to Zachary Smith Reynolds *any vested interest or share in the trust estate (or any part thereof) created and established by said will.* A proper construction and interpretation of said will shows that *no part of the trust estate* established thereby, and none of the accumulated income thereof, *would have vested* in the said Zachary Smith Reynolds *unless and until he arrived* at the age of twenty-eight years. Until the said Zachary Smith Reynolds arrived at said age of twenty-eight years, *the only interest which he had in the trust estate* established by said will (*or any part thereof*) was to receive such payment from the income thereof, if, as, and when payable to him, under the terms of said will. *Consequently, upon the death* of the said Zachary Smith Reynolds, prior to reaching the age of twenty-one years, *no part of*

Carolina, * * * [201 N. C. 267] * * * and that said judgment has ever since been complied with in the administration of said trust.

That one of the issues raised in said case * * * was the following:

2. Whether if the contention of the trustee is correct, the plaintiff is not entitled to include in his annual statement income received from his share of the trust estates of his father * * * *as "earnings* of money, *stocks or bonds owned by him."*

That * * * in said cause * * * *the argument was squarely presented to the Court, that the children of R. J. Reynolds owned vested interests in his estate with a period of postponed possession* until they should respectively attain the age of 28 years, *subject only to be divested by death* before arriving at that age, *which argument was considered by the court and expressly rejected* as appears in its opinion heretofore referred to. * * * Therefore, the Court holds as a matter of law that the *children of R. J. Reynolds did not receive any vested interest* in the trust estates of * * * their father * * *; that by the will of their father *they had only* the right to receive, if, as and when payable, certain income from said estate, *and the possibility of receiving* property *vested both in interest and possession if, as, and when they should respectively attain the age of 28 years;* * * * (Italics supplied.)

said trust estate (either corpus or income) was transferred from him to any one. (Exhibit A, pp. 680–681; Exhibit B, p. 737.)

The said judgment was appealed to the Supreme Court of North Carolina. The record in the Supreme Court consisted of the volume comprising "Exhibit A" herein, and the volume comprising "Exhibit B" herein.[1]

The appeal was fully argued before the Supreme Court, which approved and affirmed the judgment of the Superior Court. The findings, opinion and decision of the Supreme Court are likewise set out in full in "Exhibit B" herein, at pp. 711–792.

In its report the Supreme Court recited *in haec verba* the judgment of the Superior Court,[2] including the judgment of that Court relative to the nature and extent of the trust beneficiaries' interest in the trust corpus.[3]

In affirming the judgment of the Superior Court, the Supreme Court said:[4]

> The record discloses that the court below found that all parties in interest, whether *in esse* or *in posse*, present and prospective, were made parties and before the court. Those of age and minors representing every vested or contingent interest and every class—The State of North Carolina claiming its inheritance or succession taxes. All were made parties and by interplea became parties and filed fully their contentions. *This case was tried in the court below, as this Court, when it was here, in its opinion said it should be tried. The court below had full power and authority to hear and determine the contentions.* (Italics supplied.)

Again the Supreme Court said:[5]

> The pleadings have been enlarged to embrace all the

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[1] The entire record, in all of the proceedings referred to herein, is contained in said Exhibits A and B.

[2] See "Exhibit B" herein, pp. 712–751.

[3] See paragraph 60 (a), "Exhibit B," p. 737.

[4] *Reynolds* v. *Reynolds*, 208 N. C. 578, at p. 612; "Exhibit B," p. 760.

[5] "Exhibit B," p. 768.

controversies connected with the distribution of said trust shares; and *all parties having any present, future, or contingent interests therein* have been made parties to the action. (Italics supplied.)

Again the Supreme Court said:[1]

> In the present case new facts are set forth, the pleadings are enlarged *to bring in all parties* that have the remotest interest and sufficient allegations to cover *every conceivable controversy*, and the *differences are vital and bona fide controversies.* (Italics supplied.)

Again the Supreme Court said:[2]

> Paragraph 25 of the judgment is as follows: "That the parties to this proceeding are all properly before the Court; that either a next friend or a guardian ad litem has been duly appointed for each and every infant, whether born or unborn, who is now, or may hereafter be, in any way interested in the trust shares hereinafter mentioned; that all persons, whether minors or of age, and whether in esse or in posse, who are now, or who may hereafter be, interested in the trust shares hereinafter mentioned, have been made parties to this action, and have either appeared herein, or been duly served with process herein and with copies of all the foregoing pleadings."

Again the Supreme Court said:[3]

> All the facts are fully, elaborately and carefully set out in the record and the judgment which we set forth above, covering every aspect of the controversy. Due care has been taken in so important a controversy, where the property rights of infants are concerned, to set forth all the facts in the case. *We think there was sufficient evidence to support the findings of fact in the Court below on the different aspects of the controversy.* (Italics supplied.)

The decisions of the Courts of North Carolina firmly establish that *petitioner did not acquire any vested property at the date of his father's death;* that unless and until he arrived at the age of 28 years "*no part of the trust estate would have vested in him.*"

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[1] "Exhibit B," p. 772.
[2] *Ibid*, p. 773.
[3] *Ibid*, p. 790.

The law of the State of North Carolina, as evidenced by those decisions of its Courts, was determinative and binding upon the court below and upon this Court. *Blair* v. *Com'r*, 300 U. S. 5; *Freuler* v. *Helvering*, 291 U. S. 35; *Poe* v. *Seaborn*, 282 U. S. 101, 110; *Uterhart* v. *United States*, 240 U. S. 598, 603.

The court below properly followed the law of North Carolina as declared by its courts, and after discussing the matter in extenso (R. 45–47, fol. 70–72), held that the precise point had been definitely decided by the North Carolina courts and that the interest of respondent was contingent and not vested.

On that predicate the court below held, in effect, that since respondent had only a contingency or possibility of acquiring, and not an acquired vested interest, he did not "acquire" the corpus of the trust at the date of his father's death, but acquired it when he "became entitled" to it on the day he attained the age of 28 years.

Upon all of the foregoing it is obvious that there is no conflict between the Circuit Courts below on the point as to whether the interests of the respective taxpayers were vested or contingent. The decision below, in the instant case, is predicated on the finding that, under North Carolina law, respondent had only a contingent, and not a vested, interest at the date of testator's death. The decision below is grounded on that thesis. Obviously the decisions in *Van Vranken* and *Archbold* proceed upon the same thesis and conclude that in effect the resolution of that question can not affect the result.

Respondent submits that the resolution of a question of North Carolina law is not one of general interest; that the decisions of the courts of North Carolina interpreting the will of R. J. Reynolds and defining the property rights of the parties thereunder is conclusive; and that the decisions on that point do not present an issue properly reviewable by this Court.

CONCLUSION.

For the above reasons respondent respectfully submits that, if the writ be granted, it should be restricted to the precise issue raised by the alleged conflict below. Accordingly, respondent prays the Court that, if the writ be granted, the issue therein be limited to the federal question involved, viz., the construction of sec. 113 (a) (5) of the Revenue Act of 1934.

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